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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 2

LOVANDEE LADNER,

Petitioner,

vs.

UNITED STATES OF AMERICA

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

SUPPLEMENTAL BRIEF FOR PETITIONER

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LOVANDER LADNER,

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**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
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SUPPLEMENTAL BRIEF FOR PETITIONER

Introductory Statement

This case is before the Court for reargument. The case was first argued on November 19, 1957. Thereafter, on January 6, 1958, the judgment of the Court of Appeals was affirmed by an equally divided Court. 355 U.S. 282. A petition for rehearing was duly filed by petitioner; and on May 26, 1958 the Court granted said petition, vacated its judgment of January 6, 1958, and restored the case to the calendar for reargument. 356 U.S. 969.

This supplemental brief is filed solely for the purpose of considering the relevant decisions of the Court that have been rendered since the original argument. Rule 41 (5).

It is respectfully requested that strict compliance with the rules in respect of the contents of this brief not be required, since the omitted items are set forth in petitioner's original brief.

ARGUMENT

In our main brief we have shown that Section 254 of former Title 18, U.S. Code, should be construed by its own terms not to permit multiple punishments for the multiple consequences of a single act in violation of the statute. Accordingly, we have argued, there is no need to seek extraneous aid to ascertain the intention of Congress in enacting Section 254, either in the legislative history of that statute or in decisions involving other statutes.¹ Nevertheless, we have shown that both the legislative history of Section 254 and the doctrine of *Bell v. United States*, 349 U.S. 81, and related cases support the construction of Section 254 derived from its own terms.² Decisions of this Court since the original argument herein are relevant to the latter contention.

I.

The Doctrine of *Bell v. United States* Has Been Reaffirmed by This Court in *Gore v. United States*

In *Bell v. United States*, *supra*, this Court held that a single act of transportation in violation of the Mann Act constitutes only one offense even though more than one woman is transported. Conceding the power of Congress to punish the multiple consequences of a single criminal transaction as separate offenses, this Court held that such

¹ Petitioner's main brief, pp. 10-13.

² Petitioner's main brief, pp. 13 *et seq.*

an intention would not be imputed to Congress in the absence of evidence of such an intention in the enactment of the particular statute. Expressions to the same effect are found in *United States v. Universal C. I. T. Credit Corp.*, 344 U.S. 218, and *Prince v. United States*, 352 U.S. 322.

In its recent decision in *Gore v. United States*, 357 U.S. 386, the Court reaffirms the doctrine of the *Bell* case but refuses to apply that doctrine to a single criminal transaction in violation of the narcotics laws. Each of the two transactions in that case was in violation of three separate statutes respectively prohibiting the sale of narcotic drugs "except in the original stamped package or from the original stamped package" [26 U.S.C. § 4704 (a)], the sale of such drugs "except in pursuance of a written order of the person to whom such article is sold" [26 U.S.C. § 4705 (a)], and facilitating "the transportation, concealment, or sale of any such narcotic drug after being imported" contrary to law [21 U.S.C. § 174]. Since the three statutes had been enacted at different times and dealt with separate aspects of illicit traffic in narcotic drugs, and since the entire history of legislation to curb such traffic discloses the continuing intention of Congress to inflict increasingly severe punishment for offenses against such legislation, the Court held that the conditions requisite for the application of the *Bell* doctrine were not present.

Thus the *Gore* case has clarified, and limited the reach of, the doctrine of the *Bell* case. That doctrine applies only where a single criminal act or transaction violates a single statutory provision and there are multiple consequences, or more than one victim, of the act or transaction. In such a case, if Congress has not clearly indicated an intention to inflict multiple punishments for such multiple consequences, "the doubt will be judicially resolved in favor of lenity." *Gore v. United States*, 357 U.S. at p. 391.

The requisite conditions for application of the *Bell* doctrine are clearly present in the instant case. Only a single statutory provision, Section 254 of former Title 18, is involved. Petitioner engaged in only a single criminal transaction, indeed committed only a single criminal act, in firing a shotgun only once.³ Nor is there a history of persistent efforts of Congress to inflict increasingly severe penalties in order to stamp out the evil condemned by Section 254 and related statutes, such as we find in the narcotic drugs legislation.

In the *Gore* case the Court reached its decision that multiple offenses were committed by making a full inquiry into the intention of Congress. The "same evidence" rule was not mentioned, although that rule had been invoked to support the decision in *Blockburger v. United States*, 284 U.S. 299, the forerunner of the *Gore* case.⁴ It seems that, in determining the number of offenses under a Federal statute, this Court will not apply this mechanical rule of construction, which is clearly inconsistent with the decision and rationale of the *Bell* case and of the *Prince* case.⁵

II.

Other Recent Decisions of This Court May Be Distinguished From the Present Case

The issues in *Hoag v. New Jersey*, 356 U.S. 464, and *Ciucci v. Illinois*, 356 U.S. 571, were quite different from the issue in the present case. In each of those cases a state court had held that a separate offense against the laws of the state had been committed in respect of each victim of

³ See petitioner's main brief, p. 7, footnote 2.

⁴ See petitioner's main brief, p. 30.

⁵ See petitioner's main brief, p. 31.

a single criminal transaction, and this Court held that there was no violation of the due process clause of the Fourteenth Amendment in successive prosecutions by the state for such offenses.

In the *Hoag* case this Court stated explicitly that the New Jersey courts had construed the New Jersey statute "as making each of the four robberies, though taking place on the same occasion, a separate offense," that this construction was consistent with the "same evidence" rule as applied in New Jersey, and that "nothing in the Due Process Clause prevented the State from making that construction." 356 U.S. at page 467. But in the present case the interpretation of a Federal statute by Federal courts is involved, there is no constitutional question, and the issue of statutory construction is for this Court. Inasmuch as solution of that issue depends on the determination of the intention of Congress from Section 254 itself, its legislative history and other proper sources, the *Hoag* and *Ciucci* cases are not in point.

Conclusion

For the reasons stated in our main brief and in this supplemental brief, we respectfully urge that the judgment of the Court of Appeals be reversed and that the cause be remanded with instructions to grant petitioner a hearing on his motion to correct his sentence.

Respectfully submitted,

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